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THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

Report of the Secretary-General on the right to adequate food as a human right

CONTENTS

	Page
Introduction	2
GENERAL COMMENTS	
1. Food and Agriculture Organization of the United Nations	3
2. Work of the International Law Association on the Right to Food ...	4

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INTRODUCTION

1. On the basis of a recommendation by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (resolution 1982/7) approved by the Commission on Human Rights (resolution 1983/16), the Economic and Social Council by its decision 1983/140 of 27 May 1983 authorized the Sub-Commission to entrust Mr. Asbjørn Eide with the preparation of a study on the right to adequate food as a human right. Accordingly, a preliminary report was presented in 1984 (E/CN.4/Sub.2/1984/22 and Adds.1 and 2) and a final report superseding the earlier one (E/CN.4/Sub.2/1987/23) was submitted to the Sub-Commission at its thirty-ninth session in 1987.

2. In paragraph 2 of its resolution 1987/27 of 3 September 1987, entitled "The right to food", the Sub-Commission asked the Secretary-General to send a note verbale to all States requesting a description of any laws they had pertaining to the right to food and to ask the Food and Agriculture Organization of the United Nations to provide all such information at its disposal, and to report to the Sub-Commission at its forty-first session on the information obtained.

3. In paragraph 4 of the resolution, the Sub-Commission decided to return to a debate on the normative content of the right to food at a subsequent session, in the light of the report presented by the Secretary-General, taking account of, inter alia, the draft model instrument on the right to food, at present under elaboration by the International Law Association.

4. Accordingly, in a note verbale of 9 November 1987, the Secretary-General asked all States for a description of any laws they had pertaining to the right to food and requested the Food and Agriculture Organization to provide all such information at its disposal. As at 31 May 1989, a reply has been received from the Food and Agriculture Organization and information was submitted by the International Law Association. No replies have been received from Governments.

5. In conformity with Sub-Commission resolution 1987/27, the present report of the Secretary-General on the right to food (E/CN.4/Sub.2/1989/16) is submitted to the Sub-Commission at its forty-first session.

GENERAL COMMENTS

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]
[15 February 1988]

The technical divisions of FAO very much appreciate the report on the right to adequate food as a human right submitted by Mr. Asbjørn Eide (document E/CN.4/Sub.2/1987/23). They commend its conception and approach, its comprehensiveness, its style and argumentation. It is a useful document and FAO is in agreement with its general thrust.

As regards details, FAO would wish to offer the following observations:

1. The Report does not make mention of the FAO-sponsored World Food Day (WFD). The purpose of WFD is raising awareness precisely regarding the right to food, and during the past years WFD activities have always reflected this central concern world-wide. There is an explicit recognition of the importance of human right aspects in WFD: the WFD Resolution approved by the twenty-fourth session of the FAO Conference "... underscores the need for WFD activities to promote concepts of equality and dignity, as recognized in the Universal Declaration of Human Rights and International Covenants and Undertakings".

2. The Report makes no reference to the kinds of institutions needed to ensure rights to food. The Report recognizes - in paragraph 109 - that most human action in food procurement takes place in groups. It does not, however, touch on the subject of how people might organize themselves to ensure that they have the proper capacity to insist on their rights to food, although the key of peoples' capacity to ensure their rights is in most cases how these groups relate institutionally to national institutions. FAO does take credit for having worked for years, especially since the 1979 WCAARD, on establishing an institutional basis for defending the right to food and other essential resources. This could have been recognized in the Report.

3. The Report would have gained depth and width if it had treated strictly not only the right to food, but also associated rights. The right to food implies a right to certain means of producing/acquiring food. Possibly a follow-up report ought to be commissioned to examine the obligations on the part of States to "respect", to "protect" and to "fulfil" these rights. A practical consequence of paying more attention to associated rights would in any case be to emphasize in the recommendations addressed to Governments the need for a package of complementary interventions within the framework of national economic and social planning. Such a package could normally include, among others, nutritional education, procurement and price policy, providing economic support to producers, affordable prices to consumers, special programmes for small farmers and social welfare programmes for vulnerable groups supported by food aid.

4. The relationship between national and international law and law enforcement in respect of the right to food would seem to have required some further elaboration in the Report. It is felt that the lack of analysis at this level led, at least partly, to FAO being singled out in paragraph 240 for not adequately supporting the right to food, while it is recognized in other

parts that the World Food Security Compact is, in fact, the first comprehensive framework for international obligations to the realization of the right to food.

5. The recommendations could have been more elaborated and better systematized. Their simple numbering would already facilitate reference to them. But beyond this formal aspect, there seems to be ample material for substance in the Report itself (the matrix etc.) and certainly in related FAO Secretariat and governing body documents.

In addition, the Food and Agriculture Organization also made some editorial suggestions concerning the text of the report on the right to food, which have been brought to the attention of the Special Rapporteur.

WORK OF THE INTERNATIONAL LAW ASSOCIATION ON THE RIGHT TO FOOD

[Original: English]
[23 June 1989]

1. The International Law Association (ILA) established in 1983 an International Committee on the Right to Food, under the Chairmanship of Mr. Asbjørn Eide and with Mr. Philip Alston as Rapporteur. The other members are:

Prof. Hanna Bokor-Szegö (Hungary)
Mr. J.P. Dobbert (HQ/Switzerland)
Dr. A.F. van Dongen (Netherlands)
Dr. M. El-Baradei (HQ/Egypt)
Prof. M. Hilf (Federal Republic of Germany)
Alternate: Prof. V. Goetz
Prof. R. Hingorani (India)
Prof. G.J.H. van Hoof (Netherland)
Prof. J. Nafziger (United States of America)
Prof. H.W.O. Okoth-Ogendo (HQ/Kenya)
Dr. E. Riedel (Federal Republic of Germany)
Prof. D. Shelton (United States of America)
Dr. Keith Suter (Australia/New Zealand)
Dr. K. Tomasevski (Yugoslavia)
Mr. J. Zalaquett (HQ/Chile)

2. The Committee presented its first report to the Warsaw conference of the ILA in August 1988. It is intended to continue the work in order to decide on the advisability of the drafting of a new international instrument on the right to food, and a new meeting is envisaged for early 1990.

3. The Committee agreed that there is a very wide range of provisions in international law dealing with the Right to Food. But despite the vagueness of many of those provisions, there is little doubt as to the existence of a widely, and perhaps even universally, accepted body of basic norms relating to the right. It is generally agreed that the most pressing need is to develop more effective means by which to monitor or supervise States' compliance with the obligations which they have already accepted, or may undertake in the future.

4. For that reason, the Committee devoted considerable attention to the possibility of drafting a new international instrument focusing specifically on the Right to Food and which could reflect any of a variety of different approaches to implementation. Discussion focused on the advantages and disadvantages of preparing a recommendation as opposed to a convention or other form of treaty. A recommendation would not be legally binding and could be adopted by only a two-thirds majority vote. Adoption by consensus would be preferable in principle, but in practice might require too great a dilution of the content in order to satisfy the lowest common denominator.

5. But the contrast between a treaty and a recommendation should not be overstated. The formal legal standing of a recommendation can be greatly strengthened by developing effective monitoring, evaluation and supervision techniques. Nevertheless, there is no adequate substitute for a legally binding treaty.

6. The challenge then is to devise an approach which will maximize the number of States likely to accept the terms of a treaty. In a field such as food, where so many economic interests are at stake, this will require a significant degree of flexibility. One such approach is to draft a hybrid instrument, some parts of which are legally binding, while others are only hortatory. Such an approach can be described as a "legal zebra". It has been proposed in other contexts, such as the code of conduct on the transfer of technology, being drafted by UNCTAD.

7. Another approach is to draft a principal treaty which is not unduly exacting and to complement it with additional Protocols, the acceptance of which is completely voluntary. The objective is to encourage States to accept the entire régime but to enable them to do so on a step by step basis.

8. Another approach is to permit many reservations to be made by ratifying States, but this can result in having a treaty régime in which various States have radically different types of obligations. A different approach is to differentiate the legal duties on the basis of the "status" of different categories of States. Thus, for example, developing countries might assume a different set of obligations from those incumbent upon industrialized States.

9. But whatever approach is chosen with respect to the substantive provisions of a treaty, the implementation provisions will be of vital importance. The following elements were addressed in great detail in the report itself:

A. Research on the formulation of obligations

B. Reporting

C. Complaint - adjudication

D. Domestic judicial remedies

E. Incentive structure

Conclusion

10. The degree to which States party to a food convention are willing to participate in its actual implementation will determine whether the effort to draft such a convention is useful. Any number of implementation techniques, both domestic and international, suggest themselves. Some have been tried in other contexts, some have not. The complexities of the problem, while perhaps daunting from one perspective, provide opportunities to be creative in the development of implementing procedures.